

## Internal Revenue Service

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In Re:

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:BO1

PLR-119419-08

Date:

September 23, 2008

Distributing =

Controlled =

State X =

Business A =

Business B =

Shareholder 1 =

Shareholder 2 =

Shareholder 3 =

Shareholder 4 =

Shareholder 5 =

Shareholder 6 =

Shareholder 7 =

Shareholder 8 =

Shareholder 9 =

Shareholder 10 =

Shareholder 11 =

Shareholder 12 =

Shareholder 13 =

Shareholder 14 =

Shareholder 15 =

Shareholder 16 =

Shareholder 17 =

D Family =

C Family =

Dear

We respond to your April 15, 2008 request for rulings regarding certain Federal income tax consequences of a proposed transaction. The information submitted in that request and in your later correspondences dated June 9, 2008, August 22, 2008, and September 19, 2008 is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This Office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

Moreover, no information provided by the taxpayer has been reviewed and no determination has been made regarding whether the Transaction: (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations, (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see § 355(a)(1)(B) of the Internal Revenue Code and § 1.355-2(d)), or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see § 355(e)(2)(A)(ii) and § 1.355-7).

### **Summary of Facts**

Distributing is a State X corporation that is engaged in Business A and B. Distributing has two classes of stock, voting and nonvoting. Distributing's voting common stock is owned equally by Shareholder 1 (a member of the D Family) and Shareholder 2 (a member of the C Family). Distributing's nonvoting common stock is owned by 17 shareholders. Members of the D family (Shareholder 1 and Shareholders 3 through 6) together own 50 percent of the nonvoting stock and comprise the "D Family Shareholders." Members of the C Family (Shareholder 2 and Shareholders 7 through 17) together own the other 50 percent of the nonvoting stock and comprise the "C Family Shareholders."

The financial information submitted by Distributing indicates that Business A and Business B each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the last five years.

In order to resolve disputes that have arisen between members of the D Family and the C Family, the shareholders of Distributing have decided to divide the corporation's businesses and net assets between the two families.

### **Proposed Transaction**

The following transaction (the “Transaction”) has been proposed to achieve the desired division of the businesses:

(i) Controlled will be formed and Distributing will contribute one-half of its net assets, including a major part of the assets and liabilities relating to Business B, to Controlled in exchange for two classes of Controlled stock, voting stock and nonvoting stock (the “Contribution”). Some Business B assets will remain in Distributing because they are located on property used primarily by Business A.

(ii) Distributing will distribute all the voting stock of Controlled to Shareholder 2 in exchange for Shareholder 2’s voting Distributing stock, and distribute all the nonvoting stock of Controlled to the C Family Shareholders in exchange for all of their nonvoting Distributing stock according to a fixed exchange ratio of Controlled shares for Distributing shares. The distributions of Controlled voting and nonvoting stock together constitute the “Distribution”.

After the Distribution, the D Family Shareholders will own all the Distributing stock, and the C Family Shareholders will own all the Controlled stock.

### **Representations**

The taxpayers have submitted the following representations in connection with the Transaction:

(a) The indebtedness owed by Controlled to Distributing after the distribution of Controlled stock will not constitute stock or securities.

(b) The fair market value of Controlled stock and other consideration to be received by each C Family Shareholder of Distributing will be approximately equal to the fair market value of Distributing stock surrendered by the shareholder in the exchange.

(c) No part of the consideration to be distributed by Distributing will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of the corporation.

(d) The five years of financial information submitted on behalf of Business A and Business B is representative of each business’s respective present operation, and with regard to each business, there has been no substantial operational changes since the date of the last financial statements submitted.

(e) Following the Transaction, Distributing and Controlled will each continue the active conduct of its business, independently and with its separate employees.

(f) The Distribution is carried out for the following corporate business purpose: to enhance the success of the businesses by enabling the corporations to resolve management, systemic, or other problems that arise (or are exacerbated) by the taxpayer's operation of different businesses within a single corporation. The distribution of the stock of Controlled is motivated, in whole or substantial part, by this corporate business purposes.

(g) The Transaction is not used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.

(h) There is no acquisition of stock of the distributing corporation or any controlled corporation (including any predecessor or successor of any such corporation) that is part of a plan or series of related transactions (within the meaning of § 1.355-7) that includes the distribution of the controlled corporation's stock.

(i) The distribution of Controlled stock is not a disqualified distribution within the meaning of § 355(d). Immediately after the Distribution no person will hold any disqualified stock in either Distributing or Controlled because there has been and will not have been any "purchase" of stock in Distributing or Controlled within the five-year period ending on the date of the Distribution, taking into account the application of § 355(d)(6), (7), and (8).

(k) The total adjusted bases and the fair market value of the assets transferred to Controlled by Distributing each equals or exceeds the sum of the liabilities assumed (within the meaning of § 357(d)) by Controlled plus any liabilities to which the transferred assets are subject.

(l) The liabilities assumed (as determined under § 357(d)) in the transaction and the liabilities to which the transferred assets are subject were incurred in the ordinary course of business and are associated with the assets being transferred.

(m) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the Transaction.

(n) Except for post-closing adjustment items unknown at the time of the closing and the Distribution, no intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Distribution.

(o) Payments made in connection with all continuing transactions, if any, between Distributing and Controlled, will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(p) No two parties to the Transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(q) Immediately after the Transaction (as defined in § 355(g)(4)), neither Distributing nor Controlled will be a disqualified investment corporation (within the meaning of § 355(g)(2)).

### **Rulings**

Based solely on the information submitted and the representations made, we rule as follows:

(1) The Contribution followed by the Distribution will be a reorganization within the meaning of § 368(a)(1)(D). Distributing and Controlled will each be a “party to a reorganization” within the meaning of § 368(b).

(3) No gain or loss will be recognized by Distributing upon the Contribution (§§ 361(a) and 357(a)).

(4) No gain or loss will be recognized by Controlled upon the Contribution (§ 1032(a)).

(5) The basis of each asset deemed received by Controlled will be determined in accordance with §§ 362(b) and 362(e).

(6) The holding period for each of the assets deemed received by Controlled will include the period during which such asset was held by Distributing (§ 1223(2)).

(7) No gain or loss will be recognized by Distributing upon the Distribution (§ 361(c)(1)).

(8) No gain or loss will be recognized by (and no amount will be included in the income of) the C Family Shareholders upon their receipt of Controlled stock in exchange for their Distributing stock (§ 355(a)(1)).

(9) The basis of the Controlled stock in the hands of the C Family Shareholders after the Distribution will, in each instance, equal the basis of the respective Distributing stock surrendered by the shareholder in exchange therefor (§ 358(a)(1)).

(10) The holding period of the Controlled stock received by the C Family Shareholders in the Distribution will, in each instance, include the holding period of the Distributing stock surrendered by the shareholder, provided that the Distributing stock is held as a capital asset on the date of the Distribution (§ 1223(1)).

(11) As provided in § 312(h) of the Code, proper allocation of earnings and profits among Distributing and Controlled will be made under § 1.312-10(a).

### **Caveats**

Except as expressly provided herein, no opinion is expressed about the tax treatment of the transactions described above under other provisions of the Code or regulations, or about the tax treatment of any conditions existing at the time of, or effects resulting from, the transactions not specifically covered by the above rulings. In particular, no opinion is expressed regarding: (i) whether the Distribution satisfies the business purpose requirement of § 1.355-2(b); (ii) whether the Distribution is used principally as a device for the distribution of earnings and profits of Distributing and Controlled or both (see § 355(a)(1)(B) and § 1.355-2(d)), (iii) whether the Distribution is part of a plan (or series of related transactions) under § 355(e)(2)(A)(ii).

### **Procedural Statements**

This ruling is directed only to the taxpayers who requested it. Section 6110(k)(3) of the Code provides that this private letter ruling may not be used or cited as precedent.

A copy of this letter must be attached to the Federal income tax returns to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching to the return a statement that provides the date and control number (PLR-119419-08) of this ruling letter.

Pursuant to the power of attorney on file in this matter, a copy of this letter is being sent to your authorized representative.

Sincerely,

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Mark Weiss  
Assistant to the Branch Chief,  
Branch 1  
Office of Associate Chief Counsel  
(Corporate)

cc: